

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 384 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME-TAX

Versus

SAYAJI IRON & ENGG. PVT. LTD.

Appearance:

1. INCOME TAX REFERENCE No. 384 of 1992
MRS MONA BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 26/02/2004

ORAL JUDGEMENT

In this reference at the instance of the revenue, the following questions are referred for our opinion under Section 256 (1) of the Income-tax Act, 1961 ('the Act' for short), for the assessment year 1981-82:

"1. Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that the disallowance out of travelling expenses under the provisions of rule 6-D of the I.T. Rules should be worked out by taking into consideration the yearwise details of such travelling expenses rather than tripwise expenses?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that the assessee is entitled to investment allowance on computers?"

2. The assessee is a company manufacturing road making machinery, quarry equipments, material handling equipments and turn key plants. During the course of the assessment proceedings, the assessing officer calculated the disallowance of Rs.11,550/- out of travelling expenses under rule 6-D of the I.T. Rules, considering trip-wise expenses of a person during the accounting year. At the same time, the assessing officer disallowed the claim of investment allowance of Rs.1,53,386/- on computers.

In appeal, the CIT (A) held that disallowance out of travelling expenses under the provisions of rule 6-D should be made considering all the tours together made by a person during the previous year. The CIT (A) also held that the assessee is entitled to investment allowance on computers. The Tribunal confirmed the order made by the CIT (A). Hence this reference at the instance of the revenue.

3. We have heard Mrs. Mona Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent assessee.

4. As far as question No.1 is concerned, our attention is invited to the decision dated 6.2.2001 of this Court in ITR No.54 of 1988 (CIT v. Nutan Mills Limited). In the said decision, this Court has taken the following view:

"In CIT vs. Coromandel Fertilizers Ltd. (1996)

220 ITR 298, a Division Bench of the Andhra Pradesh High Court speaking through Hon'ble Mr. Justice S.S.M. Quadri (as His Lordship then was) has held that the ceiling fixed by clause (b) of sub-rule (2) of Rule 6D has to be calculated with reference to trip of an individual employee, but if an employee travels more than once in an year and spends more amount in one trip but less in another trip, the excess amount expended in one trip cannot be adjusted against the expenditure made in the next or subsequent trips. The actual expenditure incurred on each trip has to be ascertained with reference to the provisions of Rule 6D. The unit of expenditure for purposes of Rule 6D is the trip but not the individual employee. Accordingly, the expenditure incurred by the assessee will have to be taken into consideration with reference to each trip of an individual employee but not with reference to the totality of the trips made by an individual employee. Similar view has been taken by the Punjab & Haryana High Court in CIT vs. Porritts and Spencer (Asia) Ltd., (2000) 241 ITR 126.

We see no reason to take a different view regarding interpretation of the provisions of Rule 6D.

In view of the above discussion, we hold that all the tours undertaken by an employee during a year are not to be grouped together and that the limits laid down in Rule 6D have to be applied with reference to each trip of an individual employee."

Following the aforesaid decision, our answer to question No.1 is in the negative i.e., in favour of the revenue and against the assessee.

5. Coming to question No.2, Mrs. Mona Bhatt, learned standing counsel for the revenue, has vehemently submitted that the assessee is not entitled to investment allowance on computers because computers are nothing but office appliances and that merely because the computers are installed within the factory premises, they do not cease to be office appliances. The learned counsel has placed reliance on the decision of the Bombay High Court in CIT v. R. Shroff Consultants P. Ltd., (1999) 238 ITR 1018. In that case, the investment allowance is not granted on computers.

6. Section 32A of the Act provides for investment allowance. Sub-section (1) thereof provides that in respect of machinery or plant specified in sub-section (2), which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall be allowed a deduction, in respect of the previous year in which the machinery or plant was installed of a sum by way of investment allowance equal to 25% of the actual cost of the machinery or plant to the assessee.

Sub-section (2) provides that the machinery or plant referred to in sub-section (1) shall be the following namely:-

(a)

(b) any new machinery or plant installed
after the 31st day of March, 1976,--

(i)

(ii) in a small-scale industrial
undertaking for the purposes of
business of manufacture or
production of any article or
thing; or

(iii) in any other industrial
undertaking for the purposes of
business of construction,
manufacture or production of any
article or thing, not being an
article or thing specified in the
list in the Eleventh Schedule:"

The proviso is not relevant as it relates to new machinery or plant installed between 31st day of March, 1987 and 1st day of April, 1988. The assessment year under consideration is 1981-82.

Since the industrial undertaking is not entitled to investment allowance if it is manufacturing or producing articles or goods listed in the Eleventh Schedule, it is necessary to look at the relevant items in the said schedule. Since the assessee is not shown to be a small-scale industrial undertaking and since it manufactures various machines as mentioned in the statement of the case drawn by the Tribunal and referred to hereinabove, the assessee is 'any other industrial undertaking for the purpose of business of production of

any article or thing'. Machineries in question are not to be found in the Eleventh Schedule and therefore the assessee's case falls in clause (iii) of sub-section (2) of Section 32A of the Act.

7. The revenue's case however, is that the definition of "plant" in Section 43 (3) of the Act includes 'scientific apparatus' used for the purposes of the business or profession but computers are mere office appliances and cannot be said to be a scientific apparatus. In support of the said submission, reference is made to item 22 of the Eleventh Schedule.

8. Section 43 (3) of the Act defines "plant" for the purposes of Sections 28 to 41, which reads as under:

"(3) "plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession (but does not include tea bushes or livestock)"

It is clear that definition of "plant" is an inclusive one. Sub-clause (3) of Section 43 of the Act does not exhaust the definition of 'plant'.

8.1 As far as expression "scientific apparatus" is concerned, in CIT v. IBM World Trade Corporation (1981) 130 ITR 739, the Bombay High Court considered the meaning of the expression "apparatus" and held that it is a word of much wider import than the word "appliances" and definition of "plant" in Section 43 (3) of the Act shows that scientific apparatus is included in the word "plant". The Court held that the purposes for which such machines, which can be described as computers, are used are well known and in highly scientifically developed systems, they have their own roles to play and they cannot be equated, therefore, with office appliances which would be of a much simpler nature. They are really substitutes for human labour not in the sense of manual labour but in the sense they perform intellectual functions which would normally be performed by highly qualified persons. In that case the Court was concerned with data processing machines and the Court held that such machines cannot be classified as office appliances and they are scientific apparatus eligible for allowance and entitled to development rebate under section 33 (1) of the Act.

8.2 In CIT v. Shri Ganapathy Mills Company Limited, (2000) 243 ITR 879, the Court held that if the

air-conditioner was required for the optimum use of the computer kept in the mill and its safe working, such air-conditioners would also be eligible for investment allowance. That would necessarily mean that in the first place computers themselves are eligible for investment allowances.

8.3 Item 22 in the Eleventh Schedule (relied upon by the revenue) reads as under:-

"22. Office machines and apparatus such as
typewriters, calculating machines, cash
registering machines, cheque writing
machines, inter-com machines and
teleprinters.

Explanation.--The expression "office
machines and apparatus" includes all
machines and apparatus used in offices,
shops, factories, workshops, educational
institutions, railways stations, hotels
and restaurants for doing office work,
for data processing and for transmission
and reception of messages."

It is contended on behalf of the revenue that computers are used for data processing and are, therefore, office machineries and apparatus. It, however, appears that though the legislature treated data processing machines as a part of the office machinery and apparatus (only for the purpose of the Eleventh Schedule), computers are not included in the expression "office machinery and apparatus". Computers are more than mere data processing machines. Of course, in CIT v. Comp-help Services P. Ltd., (2000) 246 ITR 722 the assessee was a company engaged in the business of preparing data entries but the Court held that the assessee in that case was eligible to investment allowance.

8.4 The Court need not consider the question of disagreement or otherwise with the aforesaid decision nor refer to item 22 in the Eleventh Schedule for the simple reason that the assessee herein is not manufacturing any of the items listed in the Eleventh Schedule.

8.5 As regards the decision reported in 238 ITR 1018, the assessee therein was carrying on the business of consultancy and as a part of its consultancy business, the assessee company undertook data processing work with

the help of computers but the assessee was not engaged in the manufacturing activity and, therefore, the Court held that the assessee was not an industrial undertaking so as to be eligible to avail of the benefit of investment allowance under Section 32A of the Act. The Court did not consider whether the computers were covered by the definition of "plant".

8.6 Apart from the aforesaid statutory provisions and decisions, the Court cannot help observing that computers are now extensively used in various business activities of manufacture or production of machineries or things right from the stage of preparing designs upto the quality control.

9. In view of the aforesaid discussion, we are of the view that the CIT(A) and the Tribunal rightly held that the assessee was entitled to investment allowance on computers.

10. Our answer to question No.1 is in the negative i.e. in favour of the revenue and against the assessee, and our answer to question No.2 is in the affirmative i.e., in favour of the assessee and against the revenue.

11. The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)